

RECEIVED
CENTRAL FAX CENTER

FEB 21 2006

BURNS & LEVINSON LLP

ONE BEACON STREET - 30TH FLOOR
BOSTON, MA 02108
T 617.854.4000 • 617.854.4040
WWW.BURNSELV.COM

FACSIMILE TRANSMITTAL

Date: February 21, 2006 Client/Matter: 11460-130
Attorney No: _____

To: Examiner Zia R. Hashmi Facsimile Number: _____ Telephone Number:
U.S. Patent and Trademark Office (571) 273-8300 _____

From: John A. Hamilton Number of Pages (including cover): 6

Message:

If you experience any problems with this transmission or do not receive all pages, please call 617-345-3349.

This facsimile is attorney-client privileged and contains confidential information intended only for the person(s) named above. Any other distribution, copying, or disclosure is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original to us by mail without making a copy.

Operator: _____

Document#

SEARCHED
INDEXED
MAILED

102-9-2006

PTO/SB/21 (09-04)

Approved for use through 07/31/2006 OMB 0651-0031

U S Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMITTAL FORM

(To be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10765,246
Filing Date	January 27, 2004
First Named Inventor	David R Swenson
Art Unit	2881
Examiner Name	Zia R. Hashmi
Attorney Docket Number	11460-130

ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below). Comments on Statement of Reasons for Allowance: facsimile cover sheet.
<input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> Remarks
<input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement		
<input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Burns & Levinson LLP, formerly Perkins Smith & Cohen LLP		
Signature			
Printed name	John A. Hamilton		
Date	February 21, 2006	Reg. No.	48,946

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P O Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature			
Typed or printed name	John A. Hamilton	Date	February 21, 2006

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2

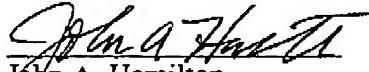
Appl. No. 10/765,246
Art. Docket No. 11460-130
Comments on Reasons for Allowance

RECEIVED
COURTNEY LEXIS 2006

FEB 9 2006

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being transmitted by facsimile to Examiner Zia R. Hashmi of Art Unit 2881 at Facsimile No. (571) 273-8300 on February 21, 2006.


John A. Hamilton
Reg. No. 48,946

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: David R. SWENSON
Serial No: 10/765,246
Filed: January 27, 2004
For: METHOD OF AND APPARATUS FOR MEASUREMENT AND CONTROL OF A GAS CLUSTER ION BEAM

Examiner: Zia R. HASHMI
Art Unit: 2881
Conf. No.: 9561

BURNS & LEVINSON LLP
One Beacon Street
Boston, MA 02108
(617) 854-4000

To: Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Comments on Statement of Reasons for Allowance

Sir:

These comments are filed in response to the Notice of Allowance mailed 08 February 2006 and the associated Detailed Action dated 26 January 2006 including the Examiner's statement of reasons for allowance. The comments are being filed to correct a missstatement made in Applicant's 04 November 2005 reply to the most recent Office Action received regarding the above-identified application. This issue has already been discussed by phone with the Examiner, who advised Applicant's counsel that the error was not relevant to the reasons for allowance. No amendments are being requested, and the issue fee will be paid in a timely manner at a later date. No additional fees are believed necessary for submission and consideration of these comments, however, if additional fees are deemed necessary, such fees are authorized to be charged to our Deposit Account No. 03-2410, Order No. 11460-130.

Page 1 of 1

Appl. No. 10/765,246
Atty. Docket No. 11460-130
Comments on Reasons for Allowance

Comments begin on page 3 of this paper.

Page 2 of 2

Comments:

These comments are being filed related to a statement made in Applicant's 04 November 2005 reply to the 04 May 2005 Office Action (hereinafter, "the Reply") that was possibly inaccurate or unclear.

The last sentence of paragraph B(b) of the "Remarks" section of the Reply states:

"He further avers that commercial apparatus and method embodiments of the presently claimed invention are now offered with each gas cluster ion beam processor that the assignee of the present application offers for sale."

This statement is inaccurate, and stems from a misreading, by Applicant's counsel, of the last sentence in paragraph 7 of the Rule 132 Declaration submitted with the Reply:

"The presently claimed invention has enabled new measurements that led to new understanding and subsequent incorporation of the pressurized gas cell into the commercial GCIB processing product."

The error of the Reply relates to the assertion that the present invention is incorporated in the product that is offered for sale. It has not been widely incorporated into the assignee's products. Rather, it has been utilized on one gas cluster ion beam (GCIB) system in the assignee's development laboratory, and sold commercially as an upgrade in only one instance. A more accurate statement of facts is that the present invention was used to make GCIB characterization measurements that were previously not possible to make. As an outcome of those measurements, new insight into the nature of GCIBs, the effect gas in the GCIB path, and resulting change (improvement) in certain processing capabilities of the GCIBs due to gas interactions has resulted in the distinct invention of the "pressure cell." The "pressure cell" invention is disclosed in co-pending U.S. patent application serial number 11/084,632, assigned to the assignee of the instant application, and is now offered with each gas cluster ion beam processor that the assignee offers for sale.

The NIM-B journal paper submitted with the Reply, "Measurement of averages of charge, energy and mass of large, multiply charged cluster ions colliding with atoms", describes the use of the apparatus and methods of the present invention to make the measurements (Fig. 3,

Appl. No. 10/765,246
Atty. Docket No. 11460-130
Comments on Reasons for Allowance

the NIM-B paper) that led to the understanding that led to the "pressure cell" invention now incorporated in commercial products.

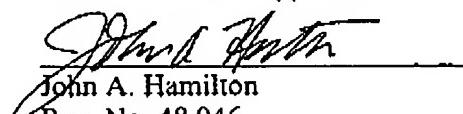
Applicant's counsel discussed the error described above with Examiner Hashmi in December 2005 and, based upon that conversation and upon the absence of any reliance on the misstatement in the reasons for allowance contained in the instant Notice of Allowance, Applicant understands that the misstatement has no bearing on the patentability of the application.

Please feel free to contact the undersigned with any questions at (617) 854-4000.

Dated: February 21, 2006

Respectfully submitted,
DAVID R. SWENSON, Applicant

By:


John A. Hamilton
Reg. No. 48,946
Attorney for Applicant

11460-130_CourtB_022106

Page 4 of 4